

Panaji, 25th September, 2003 (Asvina 3, 1925)

SERIES II No. 26

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT

No. 2

GOVERNMENT OF GOA

Department of Labour

Order

No. CL/Pub-Awards/2000/495

The following Award dated 27-12-2000 in Reference No. IT/9/99 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour and Ex-Officio Joint Secretary.

Panaji, 19th January, 2001.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/9/99

Shri Chandrakant Gaude,
Magilwada, Priol,
Mardol-Goa.

... Workman/Party I

V/s

The Chairman,
M/s. Navodit Veling Priol,
V. K. S. S. Society Ltd.,
Post Mardol, Veling,
Priol-Goa.

... Employer/Party II

Workman/Party I - In person.

Employer/Party II - represented by Adv. Shri M. K. N. Kambli.

Panaji, dated: 27-12-2000.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 2nd February, 1999 bearing No. IRM/CON/P/(196)/1998/601 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Navodit Veling Priol V. K. S. S. Society Ltd., Veling, Priol-Goa, in terminating the services of the workman Shri Chandrakant Gaude, with effect from 1-8-1997, is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/9/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "Workman") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was appointed as a Mapari by the Employer/Party II (for short, "Employer") w.e.f. 1-11-86 but was not issued the letter of appointment. That at the time when he was employed he was told the duties which he had to perform as Mapari. That initially he was being paid salary of Rs. 400/- p.m. and was being given increment from time to time and at the time of his dismissal from service his salary was Rs. 1025/- p.m. That in the year 1996 the Chairman of the employer changed and the new Chairman started threatening the workman and also started harassing him. That the Chairman wrote a letter stating that he had carried inspection and found that the workman was not present on duty which charges were totally false and fabricated. Sometime in the month of May 1997 the workman fell sick and had to undergo medical treatment and inspite of the intimation given about his sickness, the employer appointed another person in his place. That after recovering from sickness the workman reported for duty on 31-5-97 and

to his surprise he was given a show cause notice dated 13-5-97 and he was asked to give a letter in the form of an undertaking which was dictated by the Chairman and he was told that unless the said letter/undertaking was given he would not be allowed to join duties. That since he was poor and had to support his wife, two children and age old mother, the workman gave the said letter. However, on the same day another letter was given to him directing him to resume the duties from 3-6-97 and as per the said directive of the Chairman he joined duties on 3-6-97. That on that day stock balance was taken and on weighing the said stock in the presence of the workman a statement of stock balance was prepared and it was signed by the Chairman and thereafter the stock which was available was handed over to the workman by letter dated 3-6-97. That however, on the same day another letter from 3-6-97 was given to the workman stating therein that the employer has found shortage of some amount for the period from 1-1-97 to 22-5-97 and the workman was asked to refund the said amount of Rs. 12042.90. That on 28-7-97 the workman was issued a letter suspending him w.e.f. 1-8-97 without assigning any reasons and on receipt of the said suspension letter he met the Chairman on 31-7-97 requesting him to withdraw the said letter but the Chairman refused to do so and as such the workman had to remain out of service from 1-8-97 as per the letter dated 28-7-97. That subsequently he read in a local daily that a criminal case had been filed against him and since he was absconding the police are in search of him. That after reading the news in the local daily he surrendered before the Panaji Police and he was arrested in consequence to a complaint alleged to be filed against him by the employer that he had assaulted one staff by name Varsha Marathe on 31-7-97. That in the month of September, 1997 a letter dated 3-8-97 was given to him by his neighbour in which it was stated that he was removed from service from 1-8-97 because he had assaulted the staff employee Varsha Marathe on 31-7-97 and the workman replied to the said letter on 1-10-97. The workman contended that his removal from service is illegal and unjustified and is pre-planned plot. The workman contended that he was not given any opportunity to defend himself in reply of the charges made against him in various letters and no enquiry was conducted against him thereby violating the principles of natural justice. The workman therefore claimed that he is entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 4. By way of preliminary objection the employer stated that this Tribunal has no jurisdiction over the dispute in question in view of the provisions in the Maharashtra Co-operative Societies Act, 1960 as made applicable to the Territory of Goa and hence the reference is liable to be rejected. The employer admitted that the workman was appointed as Mapari w.e.f. 1-11-86. The employer stated that in addition to the duties mentioned by the workman in the statement of claim, he was to also carryout the duties and obligations as contained in the

bond executed by him at the time of his employment. The employer stated that the workman time and again was errant in discharging his duties and was lacking in integrity and honesty. The employer stated that the services of the workman were terminated because he had attempted to murder one of the staff members by name Smt. Varsha Marathe in the office premises. The employer denied that after the new Chairman was elected there was any attempt to victimise the workman. The employer stated that the ration quota was received by the workman on behalf of the employer on 21-5-97 and the said quota was to be distributed to the local consumers on 22-5-97 but the workman deliberately remained absent on that day as well as on 23-5-97 without authority from the employer and since the local consumers were getting agitated over non disbursement of their ration quota the management had no other alternative but to break open the shop No. 6 which was incharge of the workman and a panchanama of breaking open the said shop was made on 23-5-97 and on taking the charge of the stock of ration quota in the said shop disbursed the same to the ration card holders. The employer stated that on account of the errant nature of the workman and the irregularities committed by him in discharging of his duties and the shortages caused by him besides wrongful restraint, criminal intimidation and intention, insult to the Chairman, the employer had no alternative but to issue a show cause notice dated 13-5-97 to the workman which was served on 29-5-97 when he resumed his duties after his unauthorised absence from 22-5-97. The employer stated that on receipt of the said show cause notice, the workman gave a letter dated 31-5-97 admitting his guilt and asked for pardon and pleaded that no action be taken against him. The employer stated that the workman was pardoned but he continued with his same behaviour. The employer stated that from 1-1-97 to 22-5-97 the workman caused shortages in the stock of the shop No. 6 in his charge to the tune of Rs. 12042.19 and he failed to refund the said amount inspite of having agreed to do so vide letter dated 31-5-97. The employer stated that on earlier occasions also the workman had caused shortages from time to time and he had made good the said shortages by making the payment. The employer admitted that the workman was suspended vide letter dated 28-7-97 and further stated that in the morning of 31-7-97 the workman came to the workplace of the employer at Priol and demanded that the Head Clerk cum Cashier Smt. Varsha Marathe should accept the letter from him which she had refused to accept saying that the same should be handed over to the Chairman. The employer stated that at that time the workman had become furious and violent and he took out the knife which he had brought with him and started stabbing Smt. Varsha Marathe with the said knife on her chest, face, left hand and other parts of her body causing serious injuries to her and endangering her life and that thereafter he caught hold of her hair and brought her out of the cabin and started again assaulting her as a result of which she was in a pool of blood and

thereafter she fainted and became unconscious. The employer stated that on account of the above attempt to murder the Police lodged FIR against the workman on the basis of the complaint filed by Smt. Varsha Marathe. The employer stated that the workman evaded arrest by the Ponda Police and was absconding for nearly 2 weeks. The employer stated that the criminal case is pending before the Sessions Court at Panaji for trial. The employer stated that due to the murderous assault on staff member by the workman and the previous threats given to the committee members including the Chairman, the staff members were so terrified that they did not venture to step into the Office premises for nearly two weeks till the workman was arrested and remanded to Police custody. The employer stated that on account of the grave situation painted by the workman the circumstances and exigencies demanded that his services should be terminated forthwith and accordingly by notice dated 3-8-97 his services were terminated w.e.f. 1-8-97. The employer stated that no enquiry was required to be held against the workman before terminating his services. The employer denied that termination of services of the workman is illegal or unjustified. The employer stated that the services of the workman were terminated for loss of confidence. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties following issues were framed at Exb. 6:

1. Whether the Party I proves that the action of the Party II in terminating his services w.e.f. 1-8-97 is illegal and unjustified ?
2. Whether the Party II proves that the reference is not competent and this Tribunal has no jurisdiction to decide the dispute ?
3. Whether the Party II proves that the services of the Party I were terminated for loss of confidence and the termination is legal and justified ?
4. Whether the Party I is entitled to any relief ?
5. What Award ?
6. My findings on the issues are as follows:

Issue No. 1. In the negative.

Issue No. 2. In the negative.

Issue No. 3. Does not arise.

Issue No. 4. The workman is not entitled to any relief.

Issue No. 5. As per order below.

REASONS

6. Issue No. 1: The reference of the dispute was made by the Government at the instance of the workman since he challenged the action of the employer of terminating his services w.e.f. 1-8-97 and thus he raised an industrial dispute since the workman had contended that termination of his services by the employer is without holding any enquiry against him prior to termination of his services and otherwise also the action of the employer is illegal and unjustified, the burden was on the workman to prove that termination of his services is illegal and unjustified. The workman was given several opportunities to lead his evidence. However, in spite of the opportunity given the workman did not do so and he stated that he does not want to lead any evidence and he is not interested in proceeding further with the case.

7. The Bombay High Court in the case of V.N.S. Engg. Services V/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 393 has held that there is nothing in the Industrial Disputes Act, 1947 which indicates a departure from the general rule that he who approaches a Court for relief should prove his case, i.e. the obligation to lead evidence to establish an allegation made by a party is on the party making the allegation, the test being that he who does not lead evidence must fail. In another case i.e., in the case of V. K. Raj Industries V/s Labour Court (I) & others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court but the principles underlying the said act are applicable. The High Court has further held that it is well settled that after a party challenges the validity of an order the burden lies on him to prove the illegality of the order and if no evidence is produced the Party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

8. In the present case the burden was on the workman to prove that the action of the employer in terminating his services w.e.f. 1-8-97 is illegal and unjustified. As mentioned earlier, though several opportunities were given to the workman he did not lead any evidence in support of his case and submitted that he does not want to lead any evidence and that he was not interested in pursuing further with the matter. In the circumstances, there is no material before him to hold that the action of the employer in terminating the services of the workman is illegal and unjustified. Hence, I hold that the workman has failed to prove that the action of the employer in terminating his services w.e.f. 1-8-97 is illegal and unjustified and therefore I answer the issue No. 1 in the negative.

9. Issue No. 2: The employer contended that the reference is not competent and this Tribunal has no

jurisdiction to decide the dispute. Since the employer by raising the above defence wanted to oust the jurisdiction of this Tribunal to decide the dispute, the burden was on the employer to prove the same. The employer was given opportunity to lead evidence in the matter. However, inspite of the opportunity given the employer did not lead any evidence and consequently I hold that the employer has failed to prove that the reference is not competent and that this Tribunal has no jurisdiction to decide the dispute. I, therefore answer the issue No. 2 in the negative.

10. Issue No. 3: While deciding the issue No. 1 it has been held by me that the workman has failed to prove that the termination of the services by the employer w.e.f. 1-8-97 is illegal and unjustified. This being the case the question of deciding the issue No. 3 does not arise and hence I answer the issue No. 3 accordingly.

11. Issue No. 4: While deciding issue No. 1 I have held that the workman has failed to prove that the action of the employer in terminating his services w.e.f. 1-8-97 is illegal and unjustified. This being the case the workman is not entitled to any relief and I hold so accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Navodit Veling Priol V. K. S. S. Society Ltd., Veling, Priol-Goa, in terminating the services of the workman Shri Chandrakant Gaude, with effect from 1-8-1997, is legal and justified. It is hereby further held that the workman Shri Chandrakant Gaude, is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2000/781

The following Award dated 17-1-2001 in Reference No. IT/52/99 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour and Ex-Officio Joint Secretary.

Panaji, 31st January, 2001.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/52/99

Shri Joaquim Vaz,
Rep. by Goa Trade & Commercial
Workers' Union,
Velho Building,
Panaji-Goa.

... Workman/Party I

V/s

M/s. Prasad Petroleum,
Zuari Nagar-Goa.

... Employer/Party II

Party I/Workman - represented by Adv. Shri Suhas Naik.

Party II/Employer - represented by Adv. Shri R. H. Kudchadker.

Panaji, dated: 17-1-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12-4-99 bearing No. IRM/CON/VSC/(10)/98/2456 referred the following dispute for adjudication by this Tribunal.

"(1) Whether the action of the management of M/s. Prasad Petroleum, Zuarinagar-Goa, in terminating the services of Shri Joaquim Vaz, with effect from 22-8-1996, is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/52/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (for short, "Workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was employed with M/s. Zuari Agro Chemicals Employees Co-op. Society Ltd., and his services were taken over by the Employer/Party II (for short, "Employer") w.e.f 1-12-92 with continuity in service and on the same conditions on which the workman was employed with the said Co-op. Society Ltd. That he worked diligently and sincerely with the employer from the day he joined the services till the date he was illegally dismissed from service from 1-8-1996. That by letter dated 10-6-93 the workman was suspended from service and he was directed to report at the Office (Petrol Pump) at 10.30 a. m. That the workman insisted that he should be told the reasons for his

suspension and he was told verbally that there were shortages in the stock of petrol in the month of April and May 1993 and that as such he was jointly responsible along with one Mr. Ashok Naik for the said shortages. That the workman thereafter approached the union and requested for withdrawal of the suspension. However, a show cause notice dated 22-7-93 was received from the employer stating that the workman was involved in serious irregularities at the Petrol Pump and he was asked to show cause as to why he should not be dismissed from service. That an enquiry was conducted against him by the Inquiry Officer, Mr. G. M. Nagarsekar. That the enquiry was being adjourned from time to time for one reason or the other and the Inquiry Officer was acting bias in favour of the management. That the Inquiry Officer was not serious in conducting the enquiry in a fair and proper manner and he was not following the proper procedure of enquiry. That after 10-5-96 no further date of enquiry was fixed by the Inquiry Officer but in June 1996 the workman received a letter from the party II informing that findings of the Inquiry Officer were received and the Inquiry Officer had held the workman guilty of the charges of misconduct. The workman contended that the enquiry which was conducted against him by the Inquiry Officer was not fair and proper and it was conducted in violation of the principles of natural justice. The workman also contended that the findings of the Inquiry Officer were perverse because they were contrary to the evidence on record. The workman therefore claimed that he is entitled to reinstatement in service with full back wages and continuity in service.

3. After the statement of claim was filed the case was fixed for the written statement of the employer. On 21-12-2000 Adv. Shri Suhas Naik representing the workman and Adv. R. H. Kuchadkar representing the employer submitted that the dispute between the parties was amicably settled. They filed the terms of the settlement dated 21-12-2000 along with the application praying that consent award be passed in terms of the settlement. I have gone through the terms of the settlement which are duly served by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 21-12-2000-Exb. 6.

ORDER

1. It is agreed between the parties that the workman concerned in the present reference shall be treated to be retrenched and effectively relieved from the services of the Party II w. e. f. 30-9-1996.
2. It is agreed between the parties that the workman concerned shall be paid an amount of Rs. 25,000/- (Rupees twenty five thousand only) towards the retrenchment compensation, gratuity, leave wages and ex-gratia in full and final settlement.

3. It is agreed between the parties that the Party No. II has handed over to the Party No. I a post dated cheque, dated 17-1-2001 being No. 240799 for Rs. 25,000/- drawn on The Goa State Co-op. Bank Ltd., Zuarinagar towards full and final settlement of his claim.
4. It is agreed between the parties that the dispute raised in the above reference by the workman/union stands conclusively settled and the workman agree that he/union have no claim of whatsoever nature against the Party No. II/Employer.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2001/3148

The following Award dated 22-6-2001 in Reference No. IT/36/2000 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 18th July, 2001.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/36/2000

Workmen Rep. by
The General Secretary,
Enterprises (P) Ltd.,
Honda, Satari-Goa. ... Workman/Party I

V/s

M/s. Satari Engineering
Enterprises (P) Ltd.,
Honda, Goa. ... Employer/Party II

Workmen-Party I represented by Adv. Shri Suhas Naik.

Employer-Party II represented by Adv. Shri M. S. Bandodkar.

Panaji, dated: 22-6-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12th April, 2000 bearing No. IRM/CON-MAP/(31)/98/2015 referred the following dispute for adjudication by this Tribunal.

"Whether the demand of workmen employed by M/s. Sattari Engineering Enterprises (P) Ltd, Honda, Satari-Goa, for payment of 20% bonus for the accounting year 1996-97, is legal and justified?

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/36/2000 and registered A/D notice was issued to the parties. In pursuance to the said notice, parties put in their appearance. The workmen/Party I (for short, "Union") was represented by Adv. Shri Suhas Naik and the Employer/Party II (for short, "Employer") was represented by Adv. Shri M. S. Bandodkar. Both the parties submitted that a settlement was arrived at between the parties where by the dispute involved in the present reference has been amicably settled. Accordingly, both the parties filed the terms of the settlement dated 21st September, 2000 at Exb. 6 and prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workmen. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 21st September, 2000 at Exb. 6.

ORDER

1. It is agreed between the parties that the operations in Sattari Engineering Pvt. Ltd., Honda, having come to an stand-still, w.e.f. 31-10-1998, the employer employee relationship between the workmen numbering 52 stands properly served and that the services of all the 52 workmen stands terminated w.e.f. 31-10-1998 afternoon as a result of closure of establishment.
2. It is agreed between the parties that each of the workmen shall be paid their dues as per the annexure "A" to the settlement which includes, gratuity, compensation and notice pay, leave salary, lay off period wages, bonus of 96-97 and October, 1998 salary besides ex-gratia compensation equivalent to 15 days wages per year of service.

3. The management of M/s. Sattari Engineering Enterprises Pvt. Ltd., shall pay the dues to the workmen as shown in the Annexure "A" to the settlement on or before 13-10-2000 after deducting an amount of 7% of the gross/total amount payable to each individual workman. Amount so deducted at the rate of 7% shall be paid to Goa Trade & Commercial Workers' Union by cheque on or before 13-10-2000.

It is specifically agreed that the payment to the workmen shall be made by cheque on 13-10-2000 in the Office of Commissioner of Labour, for which purpose the management shall depute their representative and the union office bearer shall identify each of the workman.

4. The individual workmen agree that the deduction of the above amount is authorised deduction.
5. The workmen individually agree that in view of the above clause, there shall not be any claim of whatsoever nature against Sattari Engineering Enterprises Pvt. Ltd.
6. It is agreed between the parties that all the matters pending before different authorities including authority under Industrial Disputes Act, 1947 shall be disposed off by filing the copy of the settlement asking to pass appropriate order disposing the matters.
7. The management agrees to assist the individual workmen for getting their Provident Fund dues for the concerned authority.
8. The management agrees to pay to the 4 workmen their subsistence allowance if not paid from the day they were suspended till the date of revocation of their suspension order. The names of these workmen are Shri Santosh Gaonkar, Shri Harischandra Parsekar, Shri Rajendra Parab and Shri Jaganath Naik. The management also agrees to pay the amount as already declared by the management by issuing individual letters to above workmen dated 13-7-1998 if not paid.
9. Parties agreed that the subsistence allowance not shown in the Annexure shall be paid separately without deducting 7% from the 4 workmen on 13-10-2000 before the office of Commissioner, Labour and workmen shall discharge a valid receipt to this effect.
10. Both the parties shall report the compliance of this settlement to the Office of Commissioner Labour, on or before 30-10-2000.

ANNEXURE "A"
SATTARI ENGINEERING ENTERPRISES PRIVATE LIMITED, GOA
BREAK UP OF DUES TO WORKERS FOR FINAL SETTLEMENT

Sr. No.	Particulars	Amount (Rs.)
1.	Gratuity 26 days	147,696
2.	1 Month Notice Pay	78,132
3.	Retrenchment Compensation 30 days	246,473
4.	Restrenchment Compensation 30 days	246,473
5.	Leave Wages 30 days	57,152
6.	Bonus for 97-98	38,535
7.	October 98 salary	78,132
Total:—		892,593

Note: Including training period of 2 years for SI No. 1 & 3.

SATTARI ENGINEERING ENTERPRISES PRIVATE LIMITED, GOA
CALCULATION INCLUDING TRAINING PERIOD OF 2 YEARS

Sr. No.	Name of the Employee	Gratuity	Retre. Comp.	Retre. Comp.	One month Notice Pay	Leave Wages	Bonus 97-98	Oct. '98 Salary	Total
1	2	3	4	5	6	7	8	9	10
1.	Harischandra Kerker	5308	7780	7780	1945	2,853	1,079	1745	28690
2.	Anil A. Sawanth	4846	7260	7260	1815	3,176	1,001	1715	27173
3.	Bhiva M. Majik	4615	7000	7000	1750	2,450	944	1750	25509
4.	Krishna A. Gawas	4615	7000	7000	1750	1,633	940	1750	24688
5.	Namdev Gaonkar	3692	5960	5960	1490	1,540	762	1490	20894
6.	Rama Mangelkar	4615	7000	7000	1750	671	942	1750	23728
7.	Devidas B. Gawas	4846	7260	7260	1815	1,724	1,000	1815	25720
8.	Vishnu S. Naik	4038	6125	6125	1750		933	1750	20721
9.	Pundalik Narvekar	4038	6125	6125	1750	3,500	923	1750	24211
10.	Laxman Gawas	4038	6125	6125	1750	4,929	932	1750	25649
11.	Ramchandra Gaonkar	4038	6125	6125	1750	233	924	1750	20945
12.	Subhas N. Gawas	4038	6125	6125	1750	2,450	923	1750	23161
13.	Ashok K. Naik	4038	6125	6125	1750	1,633	933	1750	22354
14.	Malu S. Gawade	3837	5898	5898	1685	1,882	883	1615	21768
15.	Laxman Zarmekar	4038	6125	6125	1750		937	1750	20725
16.	Anil N. Naik	3837	5898	5898	1685	1,910	916	1615	21829
17.	Asifulla	3837	5898	5898	1685	843	909	1615	20755
18.	Prakash V. Sawanth	3635	5670	5670	1620	378	833	1620	19426
19.	Sakaram Thakur	3110	5079	5079	1451	1,209	716	1451	18095
20.	Dharmaraj Kalnekar	2867	4806	4806	1373		662	1373	15887
21.	Prakash Paryekar	3110	5079	5079	1451	2,322	740	1451	19232
22.	Chandu Shedge	3110	5079	5079	1451		707	1451	16877
23.	Prakash N. Shetkar	2665	4353	4353	1451	48	702	1451	15023
24.	Chandreshekar Kuttikar	2665	4353	4353	1451	3,144	722	1451	18139
25.	Soma Parsekar	2665	4353	4353	1451	871	715	1451	15859
26.	Gokuldas V. Kamath	2458	4119	4119	1373	755	685	1373	14882
27.	Hemanth Chari	2458	4119	4119	1373	183	675	1373	14300

1	2	3	4	5	6	7	8	9	10
28. Rohidas P. Gaonkar		2458	4119	4119	1373	549	669	1373	14660
29. Arjun Mane		2458	4119	4119	1373	92	656	1373	14190
30. Ganesh P. Gawas		2562	4236	4236	1412	1,859	663	1412	16380
31. Kamalakanth Gawade		2458	4119	4119	1373	526	664	1373	14632
32. Naresh Nagekar		2458	4119	4119	1373	458	668	1373	14568
33. Tukaram Halab		1962	3335	3335	1334		611	1334	11911
34. Mahadev Gaonkar		1962	3335	3335	1334	156	637	1334	12093
35. Sushanth Chari		1962	3335	3335	1334	645	603	1334	12548
36. Ganesh M. Mainker		1962	3335	3335	1334	1,534	646	1334	13480
37. Ramnath Gaonkar		1962	3335	3335	1334	956	636	1334	12892
38. Sanjay T. Raidker		1962	3335	3335	1334	1,245	649	1334	13194
39. Gurudas K. Majik		1962	3335	3335	1334	1,245	607	1334	13152
40. Sham Ghore		1962	3335	3335	1334	400	646	1334	12346
41. Ratnakanth Naik		1962	3335	3335	1334	623	626	1334	12549
42. Shamba R. Gaonkar		1962	3335	3335	1334	1,779	631	1334	13710
43. Ajay Naik		1962	3335	3335	1334	778	633	1334	12711
44. Farmanulla	0		2668	2668	1334		623	1334	8627
45. Rajeev S. Naik	0		2590	2590	1295		563	1295	8333
46. Sahadev Gawas	0		2512	2512	1256		568	1256	8104
47. Krishna Gawas	0		2512	2512	1256		541	1256	8077
48. Dyaneshwar Gaonkar	0		2512	2512	1256		596	1256	8132
49. Santosh Gaonkar	3110		5079	5079	1451	363	644	1451	17177
50. Rajan S. Parab	4938		7364	7364	1841	982	859	1841	25189
51. Harichandra Parsekar	4615		7000	7000	1750	2,625	858	1750	25598
52. Suryakanth Gawas					1050			1050	2100
Total		147696	246473	246473	78132	57,152	38,535	78132	892593

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

No. CL/Pub-Awards/2001/3812

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

The following Award dated 2-8-2001 in Reference No. IT/14/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

Ref. No. IT/14/94

By order and in the name of the Governor of Goa.

Shri Balapa Suladal,
Peter Bhatt,
Tambdi Mati, St. Inez,
Panaji-Goa.

— Workman/Party I

V/s

R. S. Mardolker, Commission, Labour and Ex-Officio
Joint Secretary.

M/s. Jaideep Agencies,
6 Purshottam Smruti,
Dr. A. G. Borkar Road,
Panaji, Goa.

— Employer/Party II

Panaji, 28th August, 2001.

Workman/Party I - Represented by Adv. Shri P. J. Kamat.

Employer/Party II - Represented by Adv. Shri K. Y. Shetye.

Panaji, dated: 2-8-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 9-9-93, bearing No. 28/44/93-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Jaideep Agencies, Panaji, Goa in terminating the services of Shri Ballapa Suladal, Labourer, with effect from 8-1-91 is legal and justified?"

It not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/14/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (for short, "Workman") filed his statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was employed with the Party II (for short "Employer") as a loader w.e.f. 1-1-81 on a monthly salary of Rs. 800/-. That the employer is engaged in the business of trading i.e., supplying different type of soft drinks, soda, to various shops, restaurants etc. That the employer has three tempos for the purpose of supplying the soft drinks and sodas and each tempo carries three loaders and one driver sum billing clerk. That the work of the workman as a loader was to load the soft drink boxes in the tempos and to unload them at various destinations, thereafter to load the empty boxes from the shops, restaurants etc., in the tempos and again unload them at the Sales Depot of the employer at Panaji. That the workman worked with the employer diligently through his tenure of service. That however the employer suddenly terminated his services on 7-1-91 without any reason and without complying with the provisions of law. That the workman therefore by letter dated 25-2-99 raised industrial dispute before the Labour Commissioner, Panaji. That the conciliation proceedings held by the Labour Commissioner resulted in failure and therefore the dispute was referred to this Tribunal for adjudication. At the time of termination of service the employer did not give one month's notice nor paid wages in lieu of wages nor paid retrenchment compensation as per the provisions of the Industrial Disputes Act, 1947. The workman contended that termination of his services by the employer is illegal, malafide and unjustified and therefore he is entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 6. The employer stated that the workman was employed on

daily wages as and when the need arose. The employer denied that the workman was employed from 1-1-81. The employer denied that the workman was employed on monthly salary of Rs. 800/- and stated that he was employed on daily wages as and when required. The employer denied that they terminated the services of the workman on 7-1-91. The employer stated that the workman willfully absented from duty from 8th January, 1991 causing inconvenience to the employer as the said period was the peak season of the business of the employer. The employer admitted that the workman raised the dispute before the Labour Commissioner, Panaji, vide letter dated 25-2-91. The employer stated that vide reply dated 16-10-92 the employer put before the Labour Commissioner the correct facts. The employer stated that they were not responsible for not arriving at a settlement before the Labour Commissioner. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties following issues were framed at Exb. 8.

1. Whether Party I proves that he was employed by Party II w.e.f. 1-1-1981 as a loader on salary of Rs. 800/- p. m.?

2. Whether Party I proves that the termination of his services by Party II w.e.f. 8-1-91 is illegal and unjustified?

3. Whether Party I is entitled to any relief?

4. What Award?

5. My findings on the issues are as follows:

Issue No. 1: In the negative.

Issue No. 2: In the negative.

Issue No. 3: In the negative.

Issue No. 4: As per order below.

REASONS

6. Issue No. 1: Adv. Shri Kamat representing the workman has submitted that the workman in his evidence has stated that he was working with the employer as a loader since the year 1981 and he has given the names of the other loaders who were working with the employer along with him, as also the names of the drivers who were employed by the employer to drive their vehicles which were used for the transportation of the vehicles. He has submitted that the employer has not denied that the loaders and drivers whose names are given by the workman in his evidence were employed and what is denied is that the workman was paid Rs. 800/- as salary p. m. and Rs. 5/- extra as bhatta charges. He has submitted that the very suggestion put to the workman that he was paid Rs. 100/- per month towards food allowance and Rs. 45.90 towards

commission shows that the workman was paid at a fixed rate and it is also contrary to the deposition of the employer's witness that the workman was paid his wages, allowance and commission every week. He has submitted that the employer was required to maintain attendance, wage records etc. under Goa, Daman and Diu Shops and Establishments Act 1973 and the rules made thereunder, and the said records would show whether the workman was employed on daily wages or monthly basis. He has submitted that since the maintenance of the records was mandatory, the statement of the employer that the records were not maintained cannot be believed. He has submitted that the fact that the workman was working for more than 10 years shows that he was a permanent worker. He has submitted that the employer has failed to produce any document to show that the workman was employed on daily wages or that he was not paid Rs. 800/- p. m. Adv. Shri Shetye the learned Advocate for the employer has submitted on the other hand that the workman's case is that he was working as a loader for more than 10 years on wages of Rs. 800/- p. m. and alongwith him other loaders were also working whose names have been given by him, as also the name of the drivers who were driving the vehicles. He has submitted that the workman has not examined any of the loaders or drivers to prove his case. He has submitted that the workman has also not produced any document to prove that he was paid Rs. 800/- p. m. as wages and he has admitted in his evidence that he is not in possession of any document to show that he was being paid Rs. 800/- p. m. towards salary. He has submitted that in the statement given in the conciliation proceedings dated 1-12-92 the workman has given the details as regards the payments made to him towards salary, daily allowance and commission and if all these amounts are taken together the total amount paid to him comes to about Rs. 535/- and not Rs. 800/- as claimed by him. Adv. Shri Shetye has submitted that the workman has failed to prove that he was employed with the employer from 1-1-1981 as a loader on salary of Rs. 800/- p. m.

7. The workman has examined himself in support of his case whereas the employer has examined Shri Sandeep Bhobe the Power of Attorney holder of Shri Jairam Bhobe who is the proprietor. The workman has stated in his deposition that he was employed with the employer as a loader about 10 years prior to the date of termination of his service. He stated that his working hours were from 8.00 a. m. to 1.00 p. m. and from 2.00 p. m. to 7.00 p. m. and his last drawn wages were Rs. 800/- p. m. He stated that he was paid his salary by 7th of every month on vouchers which he used to sign. In his cross examination he stated that he is not in possession of any document to show that he was paid Rs. 800/- p. m. towards salary. He denied the suggestion that he was employed on daily wages. The employer's witness Shri Sandeep Bhobe stated that the workman was employed on daily wages and he was being paid wages at the rate of Rs. 16/- per day, and that besides that he was being paid 00.2 paise per crate as commission and Rs. 3/- per day as

food allowance. He stated that the workman was paid his wages, commission and allowance after every week. In his cross examination he stated that the salary of the employees was being paid on vouchers. He stated that he cannot produce the cash and ledger book for the period 1988-89 to 1990-91 because they are destroyed and he cannot produce the profit and loss account, balance sheet for the above said period because they are not traceable.

8. From the evidence which has been discussed above it can be seen that no evidence has been produced by the workman to prove that he was employed by the employer as a loader from 1-1-1981. No documentary evidence in the form of letter of appointment or any other document has been produced by the workman to prove that he was employed from 1-1-1981. Similarly, no evidence oral or documentary has been produced by the workman to prove that his last drawn salary was Rs. 800/- p. m. According to the workman himself alongwith him some other loaders were working with the employer as also some drivers. He has given the names of the said loaders and drivers. However, he did not examine any loader or driver as his witness to prove that he was employed from 1-1-1981 and his last drawn salary was Rs. 800/- p. m. In the absence of any documentary evidence, this oral evidence was very much required as the burden was cast on the workman to prove the above facts. It is argued on behalf of the workman that the employer ought to have produced some document to prove that the workman was employed on daily wages or that he was not paid Rs. 800/- p. m. The employer's witness has stated in his evidence that the attendance of the workman was not marked on any attendance register. He has denied the suggestion that attendance register was being maintained wherein attendance of the employees was being marked. If according to the workman attendance register was maintained and in his attendance was marked on the same, he should have relied upon this register and asked the employer to produce the same. The workman never relied upon the said register nor sought production of the same from the employer. Similarly the workman stated in his evidence that his signature was being obtained on vouchers at the time when his salary was being paid on 7th of every month. If this was the case, the workman should have relied upon the said vouchers and asked the employer to produce them. However, the workman never relied upon the said vouchers nor he sought the production of the same from the employer. It was never the case of the employer that at the time when the workman was paid amount towards his daily wages his signature was obtained on any document. This being the case the question of producing any document by the employer to prove that the workman was employed on daily wages or that he was not paid Rs. 800/- p. m. as salary did not arise. Similarly the workman never relied upon the cash and ledger book for the period 1988-89 to 1990-91 and the profit and loss account and balance sheet for the above period. The workman wanted to being on record

the above documents in the cross examination of the employer's witness. The said witness has given the reasons for his inability to produce the said documents namely that the cash and ledger books are destroyed and the profit and loss account and balance sheet are not traceable. There is no reason to disbelieve this statement of the employer. If according to the workman the above documents were relevant he should have relied upon them and taken steps to get them produced from the employer. The workman did not do so. It is also argued on behalf of the workman that the statement of employer's witness that the wage and attendance records are not maintained cannot be believed because under the provisions of Goa, Daman and Diu Shops and Establishment Act, 1973 and the Rules, made thereunder the employer is bound to maintain the said records. There is no substance in this submission of the workman. Merely because the law provides for maintaining of certain records by an employer it cannot be presumed that the employer is maintaining the said records. Non-maintenance of the mandatory records only makes the employer liable for punishment. As regards the payment of commission and food allowance to the workman the discrepancy in the employer's evidence is not much relevant for the issue in question. In the light of what is discussed above, I hold that the workman has failed to prove that he was employed as a loader from 1-1-1981 and that his last drawn salary was Rs. 800/- p. m. I, therefore answer the issue No. 1 in the negative.

9. *Issue No 2:* It is the case of the workman that the employer terminated his service from 8-1-91 whereas it is the case of the employer that the workman absented himself from 8-1-91. Adv. Shri Kamat representing the workman has submitted that the burden was on the employer to prove that the workman had abandoned his services. He has relied upon the judgement of the Bombay High Court in the case of Gangaram Medekar v/s Zenith Safe Mfg. Company & Ors. reported in 1996 I CLR 172 in support of his above contention. He has also submitted that the employer has taken contrary stand in the defence being that in the written statement the workman has stated that the workman absented himself from 8-1-91 whereas in the evidence the employer took the defence that the workman told that he was leaving the work for better prospects. He has submitted that therefore the defence of the employer that the workman abandoned his services cannot be believed. He has submitted that the workman has stated that his services were terminated from 8-1-91 and as such the said termination amounts to "retrenchment" of services, as defined under Sec. 2 (00) of the Industrial Disputes Act, 1947. He submitted that since the employer did not comply with the provisions of Sec. 25F the Industrial Disputes Act, 1947 termination is illegal and unjustified and therefore the workman is entitled to reinstatement in service with full back wages. Adv. Shri Shetye representing the employer has submitted on the other hand that the employer never terminated the service of the workman but he himself left the services

for better prospects and absented himself from 8-1-91. He has submitted that if the services of the workman were terminated, he would have approached the Labour Court immediately and not waited for one and half month to make the complaint.

10. In the present case the employer has not admitted that the service of the workman was terminated. It is the case of the employer that their business was seasonal, that is, from 15th March to 7th June and from 8th January, 1991 the workman did not report. The workman has contented that there are contradictions in the defence of the employer because in the written statement the employer stated that the workman left the services of his own whereas in the evidence the employer took the defence that the workman left the service for better prospect. However, this discrepancy has been explained by the employer's witness in his cross examination when a specific question was put to him in that respect. When he has questioned as to which statement is correct he stated that on 7th or 8th January, 1991 the workman told that he was leaving the work and from the next day he remained absent. Therefore even if it is presumed that there was contradiction in the defence of the employer, the same has been explained to the employer's witness in his cross examination and the defence of the employer stands that the workman remained absent from 8-1-1991. The employer has relied upon the judgement of the Hon'ble Bombay High Court in the case of Gangaram Medekar (Supra). In this case the Hon'ble Bombay High Court has held that abandonment is to be proved by the employer. In my view in the present case the conduct of the workman himself shows that he had left the services of his own. If it is the case of the workman that he had not left the service and that his service was terminated on 8-1-1991, the question is why he waited for nearly one and half month to make the complaint to the Labour Commissioner. In the normal course a person would have made the complaint to the employer or to the Labour Commissioner immediately on the next day or within a reasonable time which may be within a week or so. It is difficult to believe that a person whose service is terminated would wait for nearly one and half month and then make the complaint. No explanation whatsoever has come forth from the workman regarding this delay. Besides, the reply dated 16-10-92 Exb. W-2 filed by the employer before the Labour Commissioner shows that the employer had taken the stand in the conciliation proceedings also that the services of the workman was not terminated and that he had absented from work from 8-1-1991. The said reply further shows that the employer had given offer to the workman of employment on daily wages if he was available. The failure report dated 23-6-1993 produced at Exb. W-3 mentions that the workman stated that he is willing to resume duties provided he is paid full back wages until he is permitted to resume duties. This means that the workman had refused to join the duties unless he is paid his back wages till he is permitted to resume duties. The employer did not agree to this offer of the workman. The

Hon'ble Bombay High Court in the case of Competition Printing Press v/s Shriut Jai Prakash Singh and another reported in 2001 I CLR 948 has held that no genuine and bonafide employee who was aggrieved by the illegal order of termination would deny the offer of reinstatement and would not readily give up the valuable job for the sake of few days wages. The High Court further held that the employee could have accepted reinstatement before the Government Labour Officer and even before the Conciliation Officer and prayed for referring the dispute regarding the entitlement of back wages. The High Court held that the conduct of the employee was totally unreasonable in refusing to accept reinstatement without back wages before the Government Labour Officer. The Hon'ble High Court set aside the Award and the order of the Labour Court holding that the Petitioner employer had not terminated the employment of the employee and that he had remained absent and had not accepted the offer of reinstatement made by the petitioner employer and as such was not entitled to reinstatement and back wages. Thus the above judgement of the Hon'ble Bombay High Court squarely applies to the present case.

11. As regards the contention of the workman that his case is that of retrenchment and since Sec. 25F is not complied with the termination is illegal, retrenchment comes into play when there is termination of service by the employer. If there is no act on the part of the employer thereby terminating the service of a workman, Sec. 2(00) of the Industrial Disputes Act, 1947 which defines "retrenchment" is not attached. The burden is on the workman to prove that his services were terminated. He has to produce some evidence to show that his service was terminated or that he wanted to report for work but the employer did not allow him to report. I am fortified in my view by the judgement of the Rajasthan High Court in the case of Narendra Singh Solanki v/s Raw and Finishing Production & anr. reported in 2000 I CLR 901. In this case the Petitioner employee had claimed that his service was terminated from 1-5-81. However, no order of termination was produced nor any proof was on record to show that the employee sought to report on duty and was prevented by the employer from doing so. The High Court held that in the absence of any such evidence finding of the learned Labour Court that it is a case of abandonment cannot be said to be illegal. The High Court held that perusal of the record shows that there is nothing on it to prove any action on the part of the employer to terminate the service of the employee and consequently, it cannot be said to be retrenchment made in violation of Sec. 2(00) requiring any interference either by the learned Labour Court or by the High Court. In the present case also the workman has not led any evidence oral or documentary to prove

that the employer terminated his services from 8-1-1991 or that he reported for work on 7-1-91 and that he was told by the employer not to come for work from 8-1-91. Since it is the case of the workman that alongwith him some other loaders and drivers were working, he ought to have examined any one among them to support his case that he had reported for work on 7-1-91 and that the employer told him not to come from 8-1-91. Therefore in the absence of any documentary or oral evidence from the workman, and the fact that the workman made complaint to the Labour Commissioner only after a lapse of about one and half month, and also the fact that he refused to accept the offer given by the employer asking him to report for work, there is no reason to disbelieve the contention of the employer that the workman abandoned his services by remaining absent from 8-1-91. In the light of what is discussed above, I hold that the service of the workman was not terminated but he abandoned his service by remaining absent from 8-1-91. I, therefore, hold that the workman has failed to prove that the employer illegally and without justification terminated his services from 8-1-91. I, therefore answer the issue No. 2 in the negative.

13. Issue No. 3: This issue pertains to the relief to be granted to the workman if any. I have held that the workman has failed to prove that the employer terminated his service illegally and without justification from 8-1-91. I, have also held that the workman abandoned his service by remaining absent from 8-1-91. This being the case as held by the Bombay High Court in the case of Competition Printing Press (supra), the workman will not be entitled to any relief. I, therefore hold that the workman is not entitled to any relief and hence I answer the issue No. 3 in the negative.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the management of M/s. Jaideep Agencies, Panaji, Goa did not terminate the services of the workman Shri Balappa Sudala, Labourer, w.e.f, 8-1-91 but he abandoned the service by remaining absent from 8-1-91. It is hereby further held that workman Shri Balappa Sudala is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.